STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0652

Victor Manuel Aguilar-Perez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 3, 2012
Affirmed
Hudson, Judge

Scott County District Court
File No. 70-1999-16510

Kara Mae Lynum, Lynum Law Office PLLC, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Chutich, Judge.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

Appellant challenges the district court's summary denial of his petition for postconviction relief, alleging that he is entitled to withdraw his 2000 guilty plea based on a manifest injustice because defense counsel provided prejudicially ineffective

assistance by failing to inform him of the collateral immigration consequences of his plea under the rule in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). Because the Minnesota Supreme Court has concluded that the rule in *Padilla* does not apply retroactively, no exception to the timeliness requirement for filing a postconviction petition applies, and we affirm.

FACTS

In 2000, appellant Victor Manuel Aguilar-Perez, who is a citizen of Mexico but was then a legal permanent resident of the United States, entered an *Alford* plea to charges of fifth-degree controlled-substance crime, in violation of Minn. Stat. § 152.025, subds. 2(1), 3(a) (1998). At the plea hearing, the district court informed appellant that defense counsel had indicated that he was not an expert in immigration law and could not "ensure [appellant] or guarantee [appellant] that if he enters the plea . . . he is guaranteed that he will not be deported." The district court sentenced appellant to a stay of adjudication with conditions of probation. Appellant completed probation and was discharged in 2002.

In December 2011, appellant filed a petition for postconviction relief, seeking to withdraw his guilty plea. Appellant claimed he is now facing deportation as a result of his entering a guilty plea to the controlled-substance crime. He alleged that he suffered a manifest injustice because defense counsel provided ineffective assistance by failing to inform him about the immigration consequences of his plea, based on the United States Supreme Court's decision in *Padilla*, which held that counsel who fails to advise a client that his guilty plea carries the risk of deportation may be deemed ineffective. 130 S. Ct.

at 1486. Appellant alleged that his petition met the interests-of-justice exception to the two-year timeliness requirement of Minn. Stat. § 590.01, subd. 4(a)(1) (2010). *See* Minn. Stat. § 590.01, subd. 4(b)(5) (2010) (stating exception to time bar if petitioner establishes to court's satisfaction that petition is in interests of justice). The state challenged the petition, arguing that postconviction relief was not available to appellant because a stay of adjudication is not considered a crime; appellant's petition was untimely; the issue of whether *Padilla* announced a new rule that was retroactively applicable was currently on appeal to the Minnesota Supreme Court; and permitting appellant to withdraw his guilty plea after 12 years would prejudice the state's prosecution of the case.

The district court denied appellant's petition. The district court concluded that, because appellant had received a stay of adjudication, he was not entitled to postconviction relief. Without addressing the possible application of *Padilla*, the district court also concluded that appellant's petition was untimely and that, because the drug evidence was no longer available and witnesses' memories had likely faded, allowing appellant to withdraw his plea would unduly prejudice the state. This appeal follows.

D E C I S I O N

A person who is convicted of a crime and who claims that the conviction violated his or her rights may file a petition for postconviction relief with the district court. Minn. Stat. § 590.01, subd. 1(1) (2010). A petitioner for postconviction relief "has the burden of establishing, by a fair preponderance of the evidence, facts [that] warrant a reopening of the case." *State v. Rainer*, 502 N.W.2d 784, 787 (Minn. 1993). Denial of a petition without a hearing is appropriate if "the petition and the files and records of the

proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2010). And a petition may be summarily denied "when the issues raised in it have previously been decided" by an appellate court. *Id.*, subd. 3 (2010). This court reviews the district court's summary denial of a postconviction petition for abuse of discretion. *Lee v. State*, 717 N.W.2d 896, 897 (Minn. 2006).

I

Appellant argues that the district court erred by concluding that he was not entitled to postconviction relief because a stay of adjudication is not considered a crime. In its order, the district court cited *State v. Smith*, 615 N.W.2d 849, 852 (Minn. App. 2000), *review denied* (Minn. Sept. 26, 2000), in which this court held that a defendant may not seek postconviction relief from a stay of adjudication. But since *Smith*, the Minnesota Supreme Court has clarified that an appeal from a stay of adjudication imposed in a felony case operates as an appeal from a sentencing. *State v. Manns*, 810 N.W.2d 303 (Minn. 2006); *see also State v. Allinder*, 746 N.W.2d 923, 925–26 (Minn. App. 2008) (following *Manns*). The supreme court in *Manns* directed that "[a]ppeals from stays of adjudication in felony cases are to be treated as appeals from sentencings, from which an appeal may be taken as provided in Minn. R. Crim. P. 28.02, subd. 2, and 28.04, subd. 1." 810 N.W.2d at 303. We discern no basis for treating a stay of adjudication differently in the context of postconviction relief. Therefore, the district court erred by concluding that appellant could not challenge his stay of adjudication by way of a postconviction petition.

II

The Minnesota Supreme Court has recently reaffirmed that "a motion to withdraw a guilty plea made after sentencing must be raised in a petition for postconviction relief and the timeliness of such a motion is treated the same as the manner in which delays in filing petitions for postconviction relief are treated." *Lussier v. State*, 821 N.W.2d 581, 586 n.2 (Minn. 2012) (quotation omitted). Minnesota law provides that, absent listed exceptions, a postconviction petition may not be "filed more than two years after the later of . . . the entry of judgment of conviction or sentence." Minn. Stat. § 590.01, subd. 4(a)(1). In 2000, appellant pleaded guilty, and the district court issued a stay of adjudication, which operated as a conviction for purposes of appellant's postconviction petition. *Manns*, 810 N.W.2d at 303. Therefore, unless appellant is able to show that an exception to the two-year time limitation applies, his petition must be considered untimely. *See* Minn. Stat. § 590.01, subd. 4(a)(1).

One exception to the two-year deadline applies if "the petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court and the petitioner establishes that this interpretation is retroactively applicable to the petitioner's case." Minn. Stat. § 590.01, subd. 4(b)(3) (2010). Although appellant alleged that *Padilla* amounted to a new interpretation of law that applied retroactively to his case, the district court did not address this argument. And the Minnesota Supreme Court has since held that *Padilla* announced a new rule of federal constitutional criminal procedure but that it was not a watershed rule and did not retroactively apply to a defendant's conviction on collateral

review. *Campos v. State*, 816 N.W.2d 480, 497–98 (Minn. 2012).[1] Therefore, because Minnesota law at the time of appellant's adjudication did not require his counsel to inform him of the immigration consequences of his plea, his retroactivity argument for a time-limit exception fails. *See id*. at 499.

Appellant also argued that his petition was timely because it fell within the interests-of-justice exception to the two-year limitation under Minn. Stat. § 590.01, subd. 4(b)(5). The district court addressed that argument by concluding that the interests-of-justice exception did not apply because the destruction of evidence after 12 years meant that the state would be unduly prejudiced in its reprosecution of the case.

The interests-of-justice exception to the two-year time bar on postconviction relief applies only in "exceptional situations." *Gassler v. State*, 787 N.W.2d 575, 586 (Minn. 2010). "To be reviewed in the interests of justice, a claim must have merit and must be asserted without deliberate or inexcusable delay." *Wright v. State*, 765 N.W.2d 85, 90 (Minn. 2009). Appellant sought to withdraw his guilty plea based on his argument that counsel provided ineffective assistance by failing to inform him of the immigration consequences of his plea. But at the time of appellant's plea in 2000, under Minnesota law, counsel was not required to warn a client about the collateral deportation consequences of a guilty plea, and ignorance of those consequences did not entitle a criminal defendant to plea withdrawal. *Alanis v. State*, 583 N.W.2d 573, 579 (Minn. 1998). Therefore, because appellant has failed to allege circumstances that would allow

[1] We note that the United States Supreme Court currently is considering on review the issue of whether *Padilla* applies retroactively on collateral review. *See Chaidez v. U.S.*, 655 F.3d 684 (7th Cir. 2011), *cert. granted*, 132 S. Ct. 2101 (2012).

application of the interests-of-justice exception to the two-year time limitation, the district court did not err by summarily denying appellant's postconviction petition.

Because we affirm the district court's denial of postconviction relief on these grounds, we do not address the district court's additional reasoning that appellant's delay in asserting his request for plea withdrawal would prejudice the state's reprosecution of the case.

Affirmed.